

No. C0-00-1699
STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

In re:

OCT 16 2000

Petition for Adoption of
Professionalism Aspirations

FILED

PETITION OF MINNESOTA STATE BAR ASSOCIATION

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner Minnesota State Bar Association ("MSBA") respectfully submits this pleading to petition this Honorable Court to adopt Professionalism Aspirations as set forth in the attachment to this Petition. In support of this Petition, the MSBA would show the following:

1. Petitioner MSBA is a not-for-profit corporation of attorneys admitted to practice law before this Court and the lower courts throughout the State of Minnesota.
2. This Honorable Court has established rules relating to the conduct of lawyers, including the Minnesota Rules of Professional Conduct, the Supreme Court Rules of Decorum, and the now-superseded Uniform Rules of Decorum in the District Courts. Similarly, this Court has adopted rules relating to judges and other judicial officers. *See* Minnesota Code of Judicial Conduct. Portions of the Minnesota General Rules of Practice adopted by this Court also address conduct and decorum of lawyers and judges. *See, e.g.,* MINN. GEN. R. PRAC. 2.

3. For over a decade, the MSBA has been concerned about and has addressed itself to various issues of professionalism and civility in the practice of law. These efforts have been widespread and consistent. Beginning in 1996, the MSBA has had an active Committee on Professionalism which has addressed numerous issues of professionalism in the practice. Among other things, the MSBA Professionalism Committee sponsored a training program in 1999 to help judges address breaches of professionalism in a timely and effective manner. This program was well received, and the participating judges have expressed support for the Professionalism Aspirations.

4. During 1999, the MSBA Professionalism Committee prepared Professionalism Aspirations, patterning them on the Standards for Professional Conduct that have been adopted by the United States District Court for the District of Arizona and the Seventh Circuit Court of Appeals. The Committee believes that clearly articulated standards of conduct to which we as lawyers and judges expect each other to adhere will serve to raise the level of professionalism and improve civility throughout the practice of law, both in the courts and in the large number of legal transactions which do not involve the courts.

5. The Professionalism Aspirations were adopted by the House of Delegates of the MSBA at its meeting in Minneapolis on January 14, 2000. The Board of Governors of the MSBA subsequently approved them. They are attached to this Petition as Exhibit A.

6. The MSBA recommends that this Court adopt these Professionalism Aspirations. The MSBA believes that formal promulgation by this Court will lend

significant weight to the Professionalism Aspirations and will contribute to their having a substantial and positive impact on the professionalism of Minnesota lawyers and judges and on the decorum and civility of lawyers and judges throughout the court process and outside of court.

7. The Professionalism Aspirations set forth in Exhibit A include a Preamble that specifically sets forth the expectation that the Professionalism Aspirations should not serve as the basis for establishing a standard of care or for imposition of lawyer or judicial sanctions or discipline. This provision is consistent with the aspirational nature of the Professionalism Aspirations and ensures that the aspirations will not have an unintended consequence of increasing uncivil litigation or dispute. Although the Professionalism Aspirations should not serve to establish a standard of care in any malpractice action, nor be the basis for sanctions against, or discipline of, lawyers or judges, conduct that is inconsistent with the Aspirations could independently violate the other standards of practice in the profession. Accordingly, these Professionalism Aspirations neither expand nor contract the formal requirements for conduct or competence, but they do encourage a level of conduct that may exceed the minimum required in other rules.

8. Other courts have also promulgated similar aspirational standards and those standards are believed to have a salutary impact on civility in those jurisdictions. These Professionalism Aspirations are in fact derived from standards adopted by the United States District Court for the District of Arizona, where they have worked well. *See, e.g.,*

STANDARDS FOR PROFESSIONAL CONDUCT ADOPTED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA. An extensive and well-publicized study by the Seventh Circuit bench and bar recommended that these standards be adopted for practitioners in that court. *See Final Report of the Committee on Civility of the Seventh Federal Judicial Circuit*, 143 F.R.D. 441, 448 (1992). The Professionalism Aspirations proposed for Minnesota were derived in substantial part from the Arizona standards. The Iowa Supreme Court adopted standards in 1996. *See Iowa Supreme Court, Standards for Professional Conduct, reprinted at IOWA RULES OF COURT 431 (West 2000); see also, e.g., Wisconsin Supreme Court, The Standards of Professional Responsibility, Courtesy and Decorum for the Courts of Wisconsin, reprinted at WISCONSIN COURT RULES AND PROCEDURE: STATE, ch. 62, at 1260(West 2000).*

9. Formal adoption of these Professionalism Aspirations by the Court will increase their acceptance by lawyers and judges, will cause them to be more widely circulated and published, and will increase the likelihood that they will find their way into law school curricula. The MSBA believes these standards will serve to remedy concerns about professionalism and civility in the context of legal training. *See generally ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, PROFESSIONALISM COMMITTEE, TEACHING AND LEARNING PROFESSIONALISM 33-34 (1966)(recommending courts adopt professionalism standards).*

Based upon the foregoing, Petitioner Minnesota State Bar Association respectfully asks this Court to adopt the Professionalism Aspirations as set forth in Exhibit A and cause them to be published for guidance of all courts and lawyers.

Dated: October 12, 2000.

Respectfully submitted,

MINNESOTA STATE BAR ASSOCIATION

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EXHIBIT A

PROFESSIONALISM ASPIRATIONS

PREAMBLE

We, the judges and lawyers of Minnesota, have a special responsibility for the quality of justice. We have taken an oath to conduct ourselves in an upright and courteous manner with fidelity to the court and the client, promising no falsehood or deceit. Commensurate with this responsibility and unique oath is the obligation to conduct our affairs according to the highest standards of professionalism.

The following standards reflect our commitment to professionalism. They memorialize our obligations to each other, our clients and to the people of the State of Minnesota. They are designed to raise public confidence in the legal profession and the justice system through the promotion and protection of professionalism and civility.

These standards are not to be used as a basis for litigation, lawyer discipline, or court sanctions. Nothing in these standards supersedes or detracts from existing disciplinary codes or alters existing standards of conduct against which lawyer negligence may be determined.

PROFESSIONALISM ASPIRATIONS*

I. OUR LEGAL SYSTEM

A lawyer owes personal dignity, integrity, and independence to the administration of justice. A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms.

A. Respect And Dignity. We will uphold the respect and dignity of judges, each member of the Bar, the law and the legal system.

B. Honesty. We will conduct our affairs with candor and honesty. Our word is our bond.

* A summary form of these Professionalism Aspirations is included at the end of the document. This summary version is intended to permit the standards to be posted, included in literature, or otherwise made available where the entire text would be cumbersome.

25 **C. Equal Access.** We will dedicate and commit ourselves to equal access to the legal
26 system.

27 **D. Education.** We will educate our clients, the public, and other lawyers regarding the spirit
28 and letter of these Professional Aspirations.

29 **E. Appearance of Impropriety.** We will always endeavor to conduct ourselves in such a
30 manner as to avoid even the appearance of impropriety.

31 **II. LAWYER TO CLIENT**

32 **A lawyer owes allegiance, learning, skill, and industry to a client. As lawyers, we shall**
33 **employ appropriate legal procedures to protect and advance our clients' legitimate**
34 **rights, claims, and objectives. In fulfilling our duties to each client, we will be mindful**
35 **of our obligation to the administration of justice, which is a truth-seeking process**
36 **designed to resolve human and societal problems in a rational, peaceful, and efficient**
37 **manner.**

38 **A. Independent Judgment.**

39 1. We will be loyal and committed to our clients' lawful objectives, but will not permit that
40 loyalty and commitment to interfere with our duty to provide objective and independent advice.

41 2. We will always be conscious of our duty to the system of justice.

42 3. We reserve the right to determine whether to grant accommodations to opposing counsel in all
43 matters that do not adversely affect our clients' lawful objectives.

44 4. We will advise our clients, if necessary, that they do not have a right to demand that we
45 engage in abusive or offensive conduct and we will not engage in such conduct.

46 5. We will neither encourage nor cause clients to do anything that would be unethical or
47 inappropriate if done by us.

48 **B. Proper Conduct on Behalf of Clients.**

49 1. We will affirm among parties and other lawyers that civility and courtesy are expected and are
50 not a sign of weakness.

51 2. We will endeavor to achieve our clients' legitimate objectives in our office practice work and
52 in litigation as expeditiously and economically as possible.

53 3. We will not employ tactics that are designed primarily to delay resolution of a matter or to
54 harass or drain the financial resources of the parties.

55 **III. LAWYER TO LAWYER**

56 **A lawyer owes courtesy, candor, cooperation, and compliance with all agreements and**
57 **mutual understandings to opposing counsel, in the conduct of an office practice and in**
58 **pursuit of the resolution of legal issues. As professionals, ill feelings between clients**
59 **should not influence our conduct, attitude, or demeanor toward opposing counsel.**
60 **Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive**
61 **impedes the fundamental goal of resolving disputes rationally, peacefully, and**
62 **efficiently. A lawyer owes the same duty to an opposing party who is pro se.**

63 **A. Courtesy and Punctuality.**

64 1. We will practice our profession with a continuing awareness that our role is to advance the
65 legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of
66 our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner,
67 not only in court, but also in all other written and oral communications.

68 2. We will not, even when called upon by a client to do so, abuse others or indulge in offensive
69 conduct directed to other counsel, parties, or witnesses. We will abstain from disparaging
70 personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse
71 witnesses and parties with fair consideration.

72 3. We will be courteous, civil and prompt in oral and written communications and punctual in
73 honoring scheduled appearances, meetings, depositions, appointments, etc. with opposing
74 counsel.

75 4. We will disagree without being disagreeable. We recognize that effective representation does
76 not require antagonistic or obnoxious behavior.

77 5. We will not, without good cause, attribute bad motives or unethical conduct to opposing
78 counsel nor bring the profession into disrepute by unfounded accusations or acrimony toward
79 opposing counsel, parties, and witnesses.

80 6. We will not ask a witness or an opposing party a question solely for the purpose of harassing
81 or embarrassing that individual.

82 7. We will adhere to all express promises and to agreements with other counsel, whether oral or
83 in writing, and will adhere in good faith to all agreements implied by the circumstances or local
84 customs.

85 **B. Drafting.**

- 86 1. We will not quarrel over matters of form or style, but concentrate on matters of substance.
- 87 2. We will try to achieve the common goal in the preparation of agreements.
- 88 3. When we purport to identify for other counsel or parties changes we make in documents
89 submitted for their review, we will identify all such changes accurately.
- 90 4. We will carefully craft document production requests so they are limited to those documents
91 we reasonably believe are necessary for the prosecution or defense of an action. We will not
92 design production requests to place an undue burden or expense on a party.
- 93 5. We will respond to document requests reasonably and not strain to interpret the request in an
94 artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We
95 will not produce documents in a manner designed to hide or obscure the existence of particular
96 documents.
- 97 6. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order
98 that accurately and completely reflects the court's ruling. We will promptly prepare and submit a
99 proposed order to other counsel and attempt to reconcile any differences before the draft order is
100 presented to the court.

101 **C. Scheduling, Extensions, Cancellations.**

- 102 1. We will not arbitrarily schedule a meeting, deposition, court appearance, hearing, or other
103 proceeding until a good faith effort has been made to schedule it by agreement. If we are unable
104 to contact the other lawyer, we will send written correspondence suggesting a time or times that
105 will become operative unless an informal objection is directed to us within a set reasonable time.
- 106 2. We will endeavor in good faith to honor previously scheduled trial or hearing settings,
107 vacations, seminars, meetings or other functions that produce good faith calendar conflicts on the
108 part of opposing counsel. We will not seek accommodation from another member of the Bar for
109 the rescheduling of any court setting, discovery, hearing, meeting, etc. unless a legitimate need
110 exists.
- 111 3. We will agree to reasonable requests for extensions of time and for waiver of procedural
112 formalities, provided legitimate objectives of our clients will not be adversely affected.
- 113 4. We will not request an extension of time solely for the purpose of unjustified delay or to
114 obtain a tactical advantage.
- 115 5. We will notify other counsel and, if appropriate, the court or other persons, at the

116 earliest possible time when hearings, depositions, meetings, or conferences are to be canceled or
117 postponed.

118 **D. Discovery.**

119 1. We will make reasonable efforts to conduct discovery by agreement.

120 2. We will refrain from excessive and/or abusive discovery.

121 3. We will comply with all reasonable discovery requests. We will not resist discovery requests
122 that are not objectionable.

123 4. We will not seek court intervention to obtain discovery that is clearly improper and not
124 desirable.

125 5. We will take depositions only when actually needed to ascertain facts or information or to
126 perpetuate testimony. We will not take depositions for the purposes of harassment or to increase
127 litigation expenses.

128 6. During depositions we will ask only those questions we reasonably believe are necessary for
129 the prosecution or defense of an action.

130 7. We will carefully craft interrogatories so they are limited to those matters we reasonably
131 believe are necessary for the prosecution or defense of an action, and we will not design them to
132 place an undue burden or expense on a party.

133 8. We will respond to interrogatories reasonably and will not strain to interpret them in an
134 artificially restrictive manner to avoid disclosure of relevant and non-privileged information.

135 9. We will not engage in any conduct during a deposition that would not be appropriate in the
136 presence of a judge. We will not make objections nor give instructions to a witness for the
137 purpose of delaying or obstructing the discovery process. We will encourage witnesses to
138 respond to all deposition questions that are reasonably understandable.

139 10. We will not use any form of discovery or discovery scheduling as a means of harassment.

140 11. We will make good faith efforts to resolve by agreement our objections to matters contained
141 in pleadings and discovery requests and objections.

142 **E. Sanctions.** We will not seek or threaten sanctions or disqualifications without first
143 conducting a reasonable investigation and unless it is necessary for protection of our client's
144 lawful objectives or fully justified by the circumstances.

145 **F. Opportunity to Respond.**

146 1. We will not serve motions, pleadings or briefs in any manner that unfairly limits another
147 party's opportunity to respond. We will not seek ex parte relief without first attempting to notify
148 the opposing party or attorney. We will not file memoranda or affidavits that are not permitted
149 by court rules. We will furnish opposing counsel copies of all submissions to the court either
150 contemporaneously or as soon as practical.

151 2. We will not cause a default or dismissal to be entered, when we know the identity of an
152 opposing counsel, without first making a good faith attempt to inquire about the counsel's
153 intention to proceed.

154 **G. Settlement.**

155 1. We will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience
156 for any party.

157 2. We will endeavor to confer early with other counsel to assess settlement possibilities. We will
158 not falsely hold out the possibility of settlement as a means to adjourn discovery or to delay trial.

159 **H. Request During Trial or Hearing.** During trial or hearing we will honor reasonable
160 requests of opposing counsel that do not prejudice the rights of our clients or sacrifice tactical
161 advantage.

162 **I. Conduct of Others.** We will not encourage or knowingly authorize any person under our
163 control to engage in conduct that would be improper if we were to engage in such conduct.

164

IV. LAWYER AND JUDGE

165 **Lawyers and judges owe each other respect, diligence, punctuality, and protection**
166 **against unjust and improper criticism and attack. Lawyers and judges are equally**
167 **responsible to protect the dignity and independence of the court and the profession.**

168 **A. Lawyers' Duties to Court and Administrative Tribunal.**

169 1. We will speak and write civilly and respectfully in all communications with the court or
170 administrative tribunal.

171 2. We will be punctual and prepared for all appearances so that all hearings, conferences, and
172 trials may commence on time to the greatest extent possible.

- 173 3. We will be considerate of the time constraints and pressures on the court and court staff
174 inherent in their efforts to administer justice.
- 175 4. We will not engage in any conduct that brings disorder or disruption to the courtroom or
176 administrative hearing area. We will advise our clients and witnesses appearing in these settings
177 of the proper conduct expected and required there and, to the best of our ability, prevent our
178 clients and witnesses from creating disorder or disruption.
- 179 5. We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities
180 in any oral or written communication to the court or administrative hearing officer.
- 181 6. We will avoid argument or posturing through sending copies of correspondence between
182 counsel to the court, unless specifically permitted or invited by the court.
- 183 7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such
184 dates have been set, we will attempt to verify the availability of necessary participants and
185 witnesses so we can promptly notify the court of any problems.
- 186 8. We will act and speak civilly to all other court staff with an awareness that they, too, are an
187 integral part of the judicial system.

188 **B. The Duties of Judges, Referees, and Administrative Law Judges to Lawyers and**
189 **Parties.**

- 190 1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will
191 maintain control of the proceedings, recognizing that we have both the obligation and the
192 authority to insure that all proceedings are conducted in a civil manner.
- 193 2. If we observe a lawyer being uncivil to another lawyer or others, we will call it to the
194 attention of the offending lawyer on our own initiative.
- 195 3. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral
196 communications with lawyers, parties, or witnesses.
- 197 4. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we will
198 notify counsel, if possible.
- 199 5. In scheduling all hearings, meetings and conferences, we will be considerate of time
200 schedules of lawyers, parties, and witnesses.
- 201 6. We will make all reasonable efforts to decide promptly all matters presented to us for
202 decision.

- 203 7. We will give the issues in controversy deliberate, impartial, and studied analysis and
204 consideration.
- 205 8. While endeavoring to resolve disputes efficiently, we will be considerate of the time
206 constraints and pressures imposed on lawyers by exigencies of litigation practice.
- 207 9. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and
208 that a party has a right to a fair and impartial hearing. Within the practical limits of time, we will
209 allow lawyers to present proper arguments and to make a complete and accurate record.
- 210 10. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients
211 whom, or the causes which, a lawyer represents.
- 212 11. We will do our best to insure that court personnel act civilly toward lawyers, parties, and
213 witnesses.
- 214 12. We will not adopt procedures that needlessly increase litigation expense.

215 **C. The Duties of Judges, Referees, and Administrative Law Judges to Each Other**

- 216 1. We will be courteous, respectful, and civil in opinions, ever mindful that a position articulated
217 by another judge is the result of that judge's earnest effort to interpret the law and the facts
218 correctly.
- 219 2. In all written and oral communications, we will abstain from disparaging personal remarks,
220 criticisms, or sarcastic or demeaning comments about another colleague.
- 221 3. We will endeavor to work with other judges in an effort to foster a spirit of cooperation in our
222 mutual goal of enhancing the administration of justice.

223

SUMMARY STANDARDS

224

I. OUR LEGAL SYSTEM

225 **A lawyer owes personal dignity, integrity, and independence to the administration of justice.**

226 **A lawyer's conduct should be characterized at all times by personal courtesy and professional**
227 **integrity in the fullest sense of those terms.**

228

II. LAWYER TO CLIENT

229 **A lawyer owes allegiance, learning, skill, and diligence to a client. As lawyers, we shall employ**
230 **appropriate legal procedures to protect and advance our client's legitimate rights, claims, and**
231 **objectives. In fulfilling our duties to each client, we will be mindful of our obligation to the**
232 **administration of justice, which is a truth-seeking process designed to resolve human and**
233 **societal problems in a rational, peaceful, and efficient manner.**

234

III. LAWYER TO LAWYER

235 **A lawyer owes courtesy, candor, cooperation, and compliance with all agreements and mutual**
236 **understandings to opposing counsel whether in the conduct of an office practice or in the**
237 **pursuit of litigation. As professionals, ill feelings between clients should not influence our**
238 **conduct, attitude, or demeanor toward opposing counsel. Conduct that may be characterized**
239 **as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving**
240 **disputes rationally, peacefully, and efficiently. A lawyer owes the same duty to an opposing**
241 **party who is pro se.**

242

IV. LAWYER AND JUDGE

243 **Lawyers and judges owe each other respect, diligence, punctuality, and protection against**
244 **unjust and improper criticism and attack. Lawyers and judges are equally responsible to**
245 **protect the dignity and independence of the court and the profession.**

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